

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

VIRGIL N. JOHNSON

PETITIONER

V.

CIVIL ACTION NO. 3:11CV710 DPJ-FKB

JESSIE J. STREETER

RESPONDENT

ORDER

This cause came on this date to be heard upon the Report and Recommendation [14] of the United States Magistrate Judge, after referral of hearing by this Court. Magistrate Judge Ball recommended dismissal of Johnson's petition for writ of habeas corpus for failure to exhaust state remedies.¹ The Court, having fully reviewed the unopposed Report and Recommendation of the United States Magistrate Judge entered in this cause, and being duly advised in the premises, finds that said Report and Recommendation should be adopted as the opinion of this Court.

IT IS, THEREFORE, ORDERED that the Report and Recommendation of United States Magistrate Judge F. Keith Ball be, and the same is hereby, adopted as the finding of this Court, and the same entire action should be dismissed without prejudice.

A separate judgment will be entered herein in accordance with the Order as required by Rule 58 of the Federal Rules of Civil Procedure.

¹ First, the Court notes that Johnson did not respond in opposition to Respondent's motion to dismiss [13] for failure to exhaust. Then, Judge Ball recommended that Johnson be given 14 days to file an amended petition containing only his exhausted claims — claims one and four — but, if Johnson failed to file an amended petition, that the entire petition be dismissed without prejudice. Johnson did not file an amended petition or an Objection.

SO ORDERED this the 27th day of December, 2012.

s/ *Daniel P. Jordan III*

UNITED STATES DISTRICT JUDGE